

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-183196

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MATTER OF: Chester A. Cisowski - Allowance of Real Estate Expenses Incident to Permanent Change of Station. 99161

### DIGEST:

1. Civilian Marine Corps employee who was transferred to Canal Zone from Illinois is not entitled to reimbursement for expenses incurred in connection with sale of his Illinois residence since settlement date occurred more than 2 years after employee reported for duty at new duty station.
2. Civilian Marine Corps employee who was transferred to Yuma, Arizona, from the Canal Zone is not entitled to reimbursement for expenses incurred in connection with sale of his Illinois residence since such residence was located at a former duty station, not duty station in Canal Zone from which he was transferred.

By letter of February 3, 1975, Mr. Chester A. Cisowski, a civilian employee of the Marine Corps, has appealed the administrative denial of his claim for reimbursement of expenses incurred in connection with an Illinois real estate transaction.

In 1970 the claimant was transferred from the Naval Ordnance Facility at Forest Park, Illinois, to the Panama Canal Zone. By Travel Order No. N00867-75-TC-C0009, dated November 7, 1974, he was transferred to Yuma, Arizona. On arriving in Yuma, Mr. Cisowski filed for and received reimbursement for expenses incurred in connection with an October 1, 1974 sale of a house he owned in Villa Park, Illinois. On a post-payment review of the claim, the Marine Corps Finance Center concluded that the payment had been made in error and, accordingly, effected a refund of the amount paid. Mr. Cisowski states that, although 4 years elapsed between the time he arrived in the Canal Zone and the time he sold his house, he should be allowed the expenses incurred in connection with the Illinois real estate transaction because (1) he could not buy a house in the Canal Zone if he had sold his Illinois house, and (2) he would be penalized by having to pay taxes because he could not buy a house of comparable value within the time limit prescribed by the Internal Revenue Service.

Section 5724a(a)(4) of title 5, United States Code (1970), provides that, under such regulations as the President may prescribe, a transferred employee may be reimbursed expenses incurred in

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selling or purchasing a residence. Section 4.1 of Bureau of Budget Circular No. A-56, revised June 26, 1969, the implementing regulation, provides that reimbursement of expenses incurred in selling or purchasing a residence may be reimbursed provided that:

"e. The settlement dates for the sale and purchase \* \* \* transactions for which reimbursement is requested are not later than one (initial) year after the date on which the employee reported for duty at the new duty station, except that (1) an appropriate extension of time may be authorized \* \* \* when settlement is necessarily delayed because of litigation or (2) an additional period of time not in excess of one year may be authorized or approved by the head of the agency or his designee when he determines that circumstances justifying the exception exist \* \* \*."

The above regulation was later superseded by Office of Management and Budget Circular No. A-56, revised August 17, 1971, and the Federal Travel Regulations (FPMR 101-7) (May 1973). However, no substantive change which would affect this case was made by the later regulations. All the regulations cited provided that the expenses incident to the sale could only be reimbursed if the settlement was effected within 1 year after the date the employee reported to his new station, except that an extension could be granted by the head of the agency or his designee for an additional year. In other words the time limit was 1 year without an extension and 2 years with an extension. In the instant case the record indicates that settlement incident to the sale of Mr. Cisowski's residence was made 4 years after the effective date of his transfer to the Canal Zone. Since the settlement was made 2 years after the maximum time period during which reimbursement may be made, Mr. Cisowski's claim is not allowable.

With respect to the November 7, 1974 transfer to Yuma, Arizona, from the Canal Zone, Mr. Cisowski was administratively authorized an allowance for expenses incurred in connection with real estate transactions. However, the travel regulations governing this transfer entitle Mr. Cisowski to reimbursement only if the expenses were incurred in connection with the sale of a residence at his old official

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station. Federal Travel Regulations (FPMR) para. 2-6.1 (May 1973). Inasmuch as the claimed expenses were incurred in connection with a real estate transaction in Illinois, not at his old official station in the Canal Zone, there is no basis upon which to justify reimbursement as being incident to the Yuma, Arizona, transfer.

As a matter apart from the fact that governing travel regulations afford no basis for allowing Mr. Cisowski's claim, it is urged that the claim should be allowed since Mr. Cisowski could not purchase a house in the Canal Zone and would be required to pay taxes on the sale as a result of such inability to purchase a new house. However, the foregoing regulations were issued pursuant to 5 U.S.C. § 5724a(a)(4) (1970) and, accordingly, have the force and effect of law. Our Office has no authority to waive, extend, or modify regulations issued thereunder. See B-163700, May 6, 1968.

In view of the above, the decision of the Commanding Officer, Marine Corps Finance Center, is sustained and the claim for reimbursement of expenses of the sale is disallowed. However, we note that the amount of \$856.85 was collected from Mr. Cisowski. The record indicates that such amount consists of two items: \$706.85 expenses for sale of the old residence and \$150 expenses for purchase of residence at the new station. An employee may be reimbursed for the expenses of a house at the new station, even though he has not sold a house at the old station. 47 Comp. Gen. 93 (1967). Accordingly, Mr. Cisowski may be reimbursed the expenses incurred incident to the purchase of his new residence if such expenses are otherwise proper for allowance.

R.F.KELLER

Deputy }

Comptroller General  
of the United States